C O N T E N T S .

Legal Department File No. 0. Official Secrets / 51.

Sr. No.	R. I. / O. No.	Subject	Pages.
		Opinions under the official Secrets Act, 1923.	
	713-Confl. 21/7/1951/	Section 13(5)(b) Criminal Procedure Code Sec. 403. Prosecution of Sgri Mr. M.B. Rao for reproducing the contents of certain official Secret document in People's Age. ".	1-2.
2).	595-Confl. 26-6-1951	Sections 5(1) and 5(2) Whether the Editor, Printer & and Publisher of the "Cross Roads" can be provsecuted in respect of an article published under the heading " Home Ministry Decides To Iron Curtain India " it its issue of 16-3-51).	3-6.
3).	950-Confl. 13/11/1951/	Section 5(2) Whether Provsecution of Strimati Pamlekar for an offence under sec. 5(2) is likely to succeed .	7-8.

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Legal Department.

It is permissible in law to file a fresh prosecution after a proper sanction . The sanction under which the accused was prosecuted being not the sanction as required by sub-section (5)(b) of section 13 of the Official Secrets Act, the Court could not take cognizance of the alleged offence (see sub-section (3) of section 13) , and therefore when it acquitted the accused the acquittal was not by a Court of competent Jurisdiction. That being so, section 403 , Criminal Procedure Code, does not come in the way of a fresh prosecution (See Emperor vs. Yussufalli, 49 Bom., L.R. 902).

For such a fresh prosecution to succeed, the prosecution will have to prove the existence of an original official secret document from which the contents are alleged to have been reproduced in the objected article in the "Pepple's Age. "

d/-

Additional Secretary to Government.

U.R. to H. D. (Poll.) No. 713-Confl.
dated the 21st July 1951.

OFFICE OF THE R.L.A.

The question referred by the H.D. is whether the Editor, Printer and Publisher of the "Cross Roads" can be prosecuted under sections 5(1) and 5(2) of the Official Secrets Act (Act XIX of 1923) in respect of an article published under the heading "Home Ministry Decides To Iron Curtain India" in its issue of 16th March 1951.

The article, it appears, discloses a communication from the Central Government to the State Governments relating to entry of certain types of foreigners into India. That communication was secret communication and therefore if its disclosure falls with in any of the penalising provisions of the Official Secrets Act, the disclosure would be punishable.

The relevant provisions are sections 5(1)(a) and 5(2) . Omitting words which are not relevant for the present purpose, these provisions read as follows:

"5(1).. If any perons having in his possession or control any secret oficial document or information which has been made or obtained in contravention of this Act,

(a) wilfully communicate the document or information to any person other than a person to whom he is authorised to communicate it.....

he shall be gullty of an offence under this section.

"5(2).. If any person voluntarily receives

any secret official ... document or information knowing or having reasobable ground to believe, at the time when he receive it, that the document or information is communicated in contravention of this Act, he shall be guilty of an offence under this section."

The communication in the present case was marked 'secret'. The publication does not reproduce the communication in full but th substance of it. That however does not matter in view of section 2(2) of the Act. The reference in the publication to "Top level instructions" shows that the publisher must have known that it was an official secret document. The contents of the document reflecting as they do on the relations of the Indian Republic with certain foreign Governments would also be sufficient notice to the publisher that it was an official secret document. In these circumstances the person r responsible for the publication in the "Cross Roads" can be prosecuted under section 5(1)(a and 5(2) of the Official Secrets Act, 1923 . (See also High Court Judgment in Criminal Appeal No. 639 of 1950 State Vs. Karnik and another).

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Remembrancer of Legal Affiars.

U.R. to H.D. (Poll.) No. 595 -Confl.

dated the 26th June 51.

V.v.k. 27/6/56/ 5C.

Office of the R.L.A.

Although the docu ent in question is marked "Secret" the purpose of marking it secret is stated in para 4 to be only to limit its publicity. Paragraph 4 of the document shows that a certain publicity of t he dorument was both intended and expected, the restriction being that the publicity shall not be open. Under the circumstances, it is doubtful if the prosecution of Shrimati Parulekar for an offence under the circumstances , it is doubtful if the prosecution of Shrimati parulekar for an offence under section 5(2) of the Official Secrets Act, 1923 , is likely e s ucced.

Id/- 13/11
Remembrancer of Legal Affairs.

U.R. to H.D. (Spl.). 950-Confl.
dated the 13th November 1951.

v.v.k. 27/6/56/
5C.